THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.24702 OF 2006

DATED 15-12-2006

Between:

B. Raghurami Reddy

.. Petitioner

And

The Government of Andhra Pradesh, represented by its Secretary, Panchayat Raj & Rural Development Department and others

.. Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.24702 OF 2006

Oral Order:

The petitioner, in substance, assails the order of the 1st respondent in Memo No.20208/Pts.IV/A2/2006-4 dated 22-11-2006 whereby the order of the 2nd respondent dated 04-10-2006 bearing Dis.No.1846/2006/B2 (Pts) is set aside, the revision preferred by the 5th respondent is allowed and the stay earlier granted on 24-10-2006 is vacated. The 3rd respondent was directed by this order to direct the 4th respondent-Gram Panchayat to conduct public auction of fishing rights of Devaracheruvu, a tank located in the 4th respondent Gram Panchayat.

The 4th respondent-Gram Panchayat held an auction on 27-10-2005 for grant of fishery rights of Devaracheruvu. The petitioner claims to have become the highest bidder for Rs.32,000/-. He claims to have paid the amount and thereafter to have invested money for eventual fishing in the tank. In all, he claims to have spent Rs.10,00,000/- for the purpose.

In June 2006, the petitioner claims to have approached the 4th respondent-Gram Panchayat seeking extension of lease for the current year also or in the alternative to grant him a five-years lease in terms of certain Government Orders quoted by him. The petitioner asserts that on his representation, the 4th respondent-Gram Panchayat passed a

resolution dated 18-05-2006 extending his lease for one year i.e. for the Fasli year 1416 subject to payment of 10% excess lease amount over the previous year's lease amount. He claims to have paid the amount as stipulated on 12-07-2006 by a treasury challan. Thereafter, the petitioner states, the 4th respondent sought confirmation from the 2nd respondent. Since that was not forthcoming, the petitioner filed W.P.No.19412 of 2006 seeking directions to the 2nd respondent to confirm the resolution of the Gram Panchayat. Thereafter, by the Order dated 04-10-2006, the 2nd respondent extended the lease of the petitioner for the Fasli year 1416 subject to payment of 33% additional amount over the previous year's rent. The petitioner claims to have paid the amount as directed in the 2nd respondent's proceedings dated 04-10-2006. On the basis of these developments, W.P.No.19412 of 2006 filed by the petitioner was closed and disposed of by the order dated 16-10-2006.

While so, on 02-11-2006, the petitioner received a memo from the 1st respondent dated 24-10-2006 stating that the 5th respondent, the Sarpanch of the 4th respondent-Gram Panchayat filed a revision before the 1st respondent against the 2nd respondent's order dated 04-10-2006. The petitioner states that on 06-11-2006, when he received the order dated 24-10-2006 passed by the 1st respondent, he also received a copy of the telegram sent by the 1st respondent to the 2nd respondent to the effect that the Hon'ble Minister for the Panchayat Raj desires to hear the revision on 31-10-2006 and the 2nd respondent was directed to inform all the concerned. This communication is stated to have been received by the petitioner on 06-11-2006. The petitioner claims to have received another copy of the telegram addressed to the 2nd respondent on 07-11-2006 re-scheduling hearing of the

revision on 06-11-2006. The petitioner claims to have come to Hyderabad on 10-11-2006 and on verification in the Peshi of the Hon'ble Minister for Panchayat Raj to have been informed that further notice of the hearing would be issued. Thereafter there was no other communication. Eventually the petitioner learnt that the 1st respondent passed the impugned order setting aside the order of the 2nd respondent dated 04-10-2006.

The petitioner clearly and categorically asserts that neither the copy of the revision (preferred by the 5th respondent to the 1st respondent) was served on him nor was he intimated the date fixed for the hearing of the revision. The petitioner also complains that he is not aware of the grounds on which the 5th respondent preferred a revision to the 1st respondent. The petitioner also raises other grounds to impeach the impugned order of the 1st respondent dated 22-11-2006. In view of the short ground on which the writ petition is being disposed of, on the admitted factual scenario relating to that ground, this Court does not consider it necessary to consider the other grounds urged by the petitioner to impeach the impugned order of the 2nd respondent dated 22-11-2006.

According to the learned Government Pleader for Panchayat Raj appearing for the respondents 1 to 3, the 1st respondent had exercised revisional jurisdiction (leading to the impugned order) under Section 264 of the Panchayat Raj Act 1994 (for short 'the Act').

Section 264 of the Act confers on the State Government, either *suo motu* or on application from any person interested, the authority, power and jurisdiction to examine the record of the Gram Panchayat, Mandal Parishad or Zilla Parsihad or of its Standing Committes or any

authority, officer or person, in respect of any proceedings to satisfy itself as to the regularity of such proceedings or as to the correctness, legality or propriety of any decision or orders passed and to pass appropriate orders thereon. The provisio to Section 264 (1) specifically mandates the Government not to pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

It is a settled principle of administrative law that even in the absence of an express obligation as specified in the provisio to Section 264 (1), in the absence of any express or implied exclusion of the principles of the principles of natural justice, particularly, when quasi-judicial power is being exercised, the authority exercising such power is required to follow the principles of natural justice and afford a reasonable opportunity.

To avoid ambiguity and to avoid any misconception that Government might harbor as to the applicability of this principle of natural justice, the statutory provision has clearly mandated that the Government shall not exercise the revisional power in a manner prejudicial to any party unless such party has been put to a reasonable notice and has been provided reasonable opportunity of making a representation. The scope of reasonable opportunity is also too well settled. The revisional authority is required to at least provide the party affected (the petitioner) a copy of the revision preferred by the 5th respondent so as to enable him to meet or submit his defence to whatsoever is alleged against him.

The 1st respondent has filed a counter-affidavit which waxes eloquent and prolix on the merits of the order passed by the 1st respondent. The petitioner specifically alleged (in paragraph 8 ground

a) that the revision preferred by the 5th respondent was not served on him nor the revision disposed of after notice to him. The counter-affidavit does not meet this assertion. In paragraph 5 of the counter-affidavit, the answering respondent (1st respondent) pleads that initially the hearing of the revision was scheduled to 31-10-2006 and thereafter was postponed to 06-11-2006 and that on 03-11-2006, the 1st respondent had issued an express telegram to the 2nd respondent intimating the date of hearing as 06-11-2006 and directing that the same be informed to all the concerned. It is also alleged that the petitioner did not approach the 1st respondent to consider the petitioner's request and had the petitioner approached the State for re-considering the matter, it would have been examined by the Government for passing appropriate orders. In this state of the pleadings in the counter-affidavit, it is clearly a case of non-traverse by the State of the express averments in the writ petition (regarding denial of reasonable opportunity to the petitioner and in contravention of the specific provision of Section 264 (1) provisio).

In the facts and circumstances, in the light of express averments in the writ petition, in the light of conscious and apparently conscious silence on this aspect in the counter-affidavit, the conclusion is inescapable and irresistible that the 1st respondent has passed the impugned order (exercising revisional power) in gross violation of the provisions of the Section 264 (1) provisio of the Act which has resulted in denial reasonable opportunity to the petitioner.

The above conduct constitutes a grossly negligent and careless exercise of quasi-judicial functions by the Government, despite the clear legislative mandate. Such grossly negligent conduct (which even a person having a nodding acquaintance with the provisions of the Act ought not to have indulged in) casts and wholly avoidable

litigative burden on this Court and has caused the petitioner a clearly avoidable litigative process. The illegal procedure followed by the 1st respondent is not merely erroneous. It amounts to gross negligence and a careless exercise of power and jurisdiction.

The impugned order of the 1st respondent dated 22-11-2006 is invalid, is incontestable. It is accordingly quashed. The impugned order of the 1st respondent is declared non-est and inoperable. Since the 1st respondent has passed an order (exercising revisional power under Section 264 (1) of the Act) in gross violation of the procedural rigor expressly mandated in the proviso to Section 264 (1) of the Act, the 1st respondent has acted negligently. The 1st respondent shall therefore pay costs to the petitioner and to the A.P. State Legal Services Authority. The 1st respondent shall, within two weeks from the date of receipt of a copy of this order, pay costs of Rs.10,000/- (Rupees ten thousands only) of which Rs.2,000/- (Rupees two thousands only) shall be paid to the petitioner and Rs.8,000/- (Rupees eight thousands only) to the A.P. State Legal Services Authority. A copy of this order shall be marked to the Secretary, A.P. State Legal Services Authority for appropriate information and action for recovery of the costs payable to it. Nothing in this order should however be construed as an expression by this Court on the merits of the decision of the State Government in the impugned order dated 22-11-2006. The order is invalidated merely on the ground that it is passed in violation of the statutory requirement, to afford an opportunity to the affected party/petitioner.

The writ petition is allowed as above with costs.

GODA RAGHURAM, J

15th December, 2006
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